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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/166,625	10/05/1998	DAVID C. MAY	1020-0501	9351

7590 02/26/2002

MAGINOT ADDISON & MOORE  
BANK ONE CENTER/TOWER  
111 MONUMENT CIRCLE SUITE 3000  
INDIANAPOLIS, IN 46204

EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 02/26/2002

28

Please find below and/or attached an Office communication concerning this application or proceeding.

A 9-28

**Office Action Summary**

Application No.

09/166,625

Applicant(s)

MAY, DAVID C.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 January 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other:

## **DETAILED ACTION**

### ***Continued Prosecution Application***

1. The request filed on September 14, 2001, for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/166,625 is acceptable and a CPA has been established. An action on the CPA follows.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,266,390 issued to Garland alone or in view of US 5,368,912 issued to Reaves for the reasons of record.

### ***Response to Arguments***

4. Applicant's arguments filed on January 24, 2002 have been fully considered but they are not persuasive. Applicant traverses the above rejection by reasserting that the cited Garland reference teaches away from the presently claimed invention. Specifically, Applicant notes Garland's teaching "Canvas dropcloths may permit the fluid product to penetrate and pass through the cloth." (Response, page 3.) Applicant argues that since canvas is usually made of

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cotton, one would not be motivated to replace the polypropylene layer of Garland with cotton or rayon fibers.

In response, it is first noted that the cited Garland teaching is a part of a discussion of the problems of prior art dropcloths. Specifically, Garland states the following at col. 1, lines 14-39):

Dropcloths made of traditional cloth fabric, such as canvas material and the like, are now widely used and have been used for many years to protect floors, fixtures, ground cover and the like during painting, washing and other-like finishing of vertical wall surfaces, ceilings, and the like. More recently, plastic sheeting, such as thin polyethylene sheeting has also been used. Although the dropcloths and other sheet-like members heretofore used have provided certain protection, the prior art products have certain disadvantages. Canvas dropcloths may permit the fluid product to penetrate and pass through the cloth.... There is a wide range of weights and weaves in this cloth material which make the product very inconsistent. Plastic sheeting, as generally provided, will not allow any such inconsistent penetration of the fluid product. However, plastic sheeting for use as a dropcloth is generally a quite thin sheet and has limited tear resistance. Further, plastic has a tendency to slip and may not remain in a desired arrangement and also cause slippage of the working personnel. In addition, the plastic film dropcloth does not absorb the paint or other product....”

Garland attempts to solve the problems associated with canvas dropcloths (i.e., fluid may penetrate and pass through cloth to underlying surface) and plastic dropcloths (i.e., slippery, non-absorbent, low tear resistance) by forming a composite dropcloth comprised of outer absorbent layers and an inner impermeable film layer (col. 1, lines 53-68).

Thus, the Examiner respectfully disagrees with Applicant's position of Garland's teachings. First, it is reiterated that a teaching to a canvas fabric is *not equivalent* to a teaching of a nonwoven cotton or rayon fabric. Canvas, although commonly made of cotton fibers, is a

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woven fabric. The fabric relied upon for the rejection is a *nonwoven* fabric of absorbent polypropylene fibers.

Second, Garland's teaching of the problem of prior art canvas dropcloths is solved with Garland's invention (i.e., a multilayered dropcloth). The fluid penetration associated with canvas dropcloths is due to the inconsistent weave and absorbent nature of canvas. The main disadvantage of canvas dropcloths is resolved by Garland by the inner barrier film and not the choice of material (i.e., cotton vs. polypropylene) of the outer absorbent layers.

In response to Applicants request for an explanation as to why one of ordinary skill in the art, knowing (i) the disadvantages of canvas and (ii) that canvas is usually made of cotton, would be motivated to modify Garland wherein a cotton or rayon nonwoven is substituted for the polypropylene nonwoven layer (Response, page 4), it is reasserted that the disadvantages of canvas are related to the weave of canvas and its unitary absorbent layer, rather than the fiber employed. As noted by Applicant, the modification of Garland is to *substitute* a cotton or rayon *nonwoven*--not a cotton woven fabric nor a canvas fabric--for the *absorbent polypropylene nonwoven* layer. Proper motivation is provided by the fact that Garland's polypropylene layer must be specially formed or treated to render said polypropylene absorbent (col. 3, lines 29-31). As such, one of ordinary skill in the art would be motivated to substitute said treated absorbent polypropylene with a fiber which is known to be inherently absorbent, such as cotton or rayon. Thus, Garland's teaching of woven canvas dropcloths is completely irrelevant to the present rejection and the motivation for which to substitute one absorbent fiber type for another in the nonwoven fabric layer of Garland. Therefore, the above obviousness rejection of claims 1-17 is hereby maintained.

***Conclusion***

5. This is a CPA of Applicant's earlier Application No. 09/166,625. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
February 25, 2002